RECENT IMPORTANT DECISIONS.

ADVERSE POSSESSION—PRIOR HOLDING.—Thinking it public land, R and G took possession of 160 acres of land belonging to the plaintiff, with the intention of obtaining it from the State by pre-emption. After a year's possession, R purchased G's interest and for more than thirty years since that time claimed to be the owner. No further steps were taken toward obtaining title from the State, but it does not appear whether or when R discovered his mistake as to the supposed government ownership of the land. Plaintiff brings trespass to try title. *Held*, the mere fact that R, at the time he surveyed and took possession of the land, thought it to be public land does not prevent his possession from being adverse. *Trueheart* v. *Graham et al.* (Tex. Civ. App. 1912), 141 S. W. 281.

The theory upon which title by adverse possession vests is that it presupposes a grant, without requiring any further evidence of its having been made. *Proprietors of Charles River Bridge* v. *Proprietors of Warren Bridge*, 11 Pet. 420, 9 L. Ed. 773. But mere lapse of time alone is not sufficient to confer title, *Compo* v. *Jackson Iron Co*, 49 Mich. 39, 12 N. W. 901; the possession must be open, notorious, and under claim of ownership. *City of St. Louis* v. *Priest*, 103 Mo. 652, 15 S. W. 988; *Magee* v. *Magee*, 37 Miss. 138. Moreover, the possession must be with knowledge of a paramount claim and adverse thereto. *Alexander* v. *Polk*, 39 Miss. 737. Thus in cases the facts of which are similar to those of the principal case, it was held that in order to obtain title by adverse possession, there must be a wrongful entry; to be wrongful, the possession must be adverse; to be adverse, the claimant must know of the claims of another, and intend to keep possession in opposition thereto, under a claim of right; and that an entry on the lands of another under a mistaken, though honest, belief that they are public lands and subject to entry, does not work a disseisin of the rightful owner. *Hunnewell* v. *Burchett*, 152 Mo. 611, 54 S. W. 487; *Yesler Estate* v. *Holmes*, 39 Wash. 34, 80 Pac. 851; *Beale* v. *Hite*, 35 Ore. 176, 57 Pac. 322. These cases seem sound on principle and are well supported by authority, so notwithstanding the fact that it finds full support in *Maas* v. *Burdetzke*, 93 Minn. 295, 101 N. W. 182, 106 Am. St. Rep. 436, and *Price* v. *Eardley*, 34 Tex. Civ. App. 60, 77 S. W. 416, which last case reviews and rejects the principles above set forth, unless R did discover his mistake and the statutory period has since run, we cannot regard the rule laid down in the principal case as the correct one. But even assuming the existence of this fact, it is difficult to see upon what legal ground the case can be supported. Color of title is absolutely necessary to a claim of title by adverse possession, *Wright* v. *Mattison*, 18 How. 50, 15 L. Ed. 280. While it may consist in any writing connected with the title which serves to define the extent of the claim, *Veal* v. *Robinson*, 70 Ga. 809, it must purport to convey, *Goodson* v. *Brothers*, 111 Ala. 589, 20 South. 443; *Nelson* v. *Davidson*, 160 Ill. 254, 43 N. E. 361. Claim of title must be made under some distinct claim, mere naked possession and a general assertion of owner-

ship, without reference to any source from which such ownership can arise, is insufficient. *In re Blizzard,* 63 Hun 630, 18 N. Y. Supp. 82. Claimant does not pretend to hold under any grant, public or private, unless it be under deed from G, who he knew could not convey title; he is a mere squatter, and a squatter cannot get title adversely. *Sacket* v. *McDonnell,* Fed. Cas. 12,202.

APPEAL AND ERROR—HARMLESS ERROR—ADMISSION OF EVIDENCE—MORTALITY TABLES.—A child 27 months of age was fatally injured by defendant's train. In an action against the defendant under the survival act, the mortality tables found under § 7220 COMPILED LAWS OF MICHIGAN 1897, which give no expectancy of life of any age under 10 years, were admitted in evidence against the objection of the defendant, for the purpose of showing the probability of life of the child after reaching majority. After a verdict for $3,850 rendered against the defendant, the trial court conceded that the admission of such tables was erroneous, and attempted to cure the error by ordering a reduction of $850 in the verdict. *Held,* the admission of such tables was reversible error; that it was impossible for any court to judge what effect the tables had upon the deliberation of the jury; that therefore the error was not cured by the court's reduction of the verdict. *Morse* v. *Detroit, G. H. & M. Ry. Co.* (Mich. 1911), 133 N. W. 935.

The court in the principal case stated that it was the duty of the jury to estimate deceased's expectancy from the age of 27 months and not from 10 or 21 years, and followed the rule laid down in *Rajnowski* v. *Railroad Co.,* 74 Mich. 20, 41 N. W. 847 which arose on similar facts. The court in that case, holding the admission of such tables prejudicial error, say: "The tables give no expectancy of life for any age under 10 years. The plaitiff's intestate was but 5 years of age and what pertinent use could be made of the tables it is impossible to see." The tables under § 7220, *supra,* were held admissable in the following Michigan cases: *Merrinane* v. *Miller,* 148 Mich. 412, 111 N. W. 1050; *Jones* v. *McMillan,* 129 Mich. 86, 88 N. W. 206; *Denman* v. *Johnston,* 85 Mich. 387, 48 N. W. 565; *Haney* v. *Village of Pinckney,* 155 Mich. 656, 119 N. W. 1099. However, none of these cases related to persons under the age covered by the tables. For proper cases holding the Carlisle, Northampton and Wigglesworth tables admissible to show expectancy of life see *Ward* v. *Dampskibsselskabet Kjoebenhavn,* 144 Fed. 524 and cases cited in 20 AM. & ENG. ENCY. LAW, 886. Decisions on the point involved in the principal case are few. However the decision in the principal case is in accord with the case of *Decker* v. *McSorley,* 111 Wis. 91, 86 N. W. 554, which was an action for death of a child four and one-half years old. The court permitted the introduction of a mortality table showing the expectancy of life of a child ten years of age. On appeal this was held to be reversible error. *Pearl* v. *Omaha & St. L. R. Co.,* 115 Ia. 535, 88 N. W. 1078 was an action for death of a man 27 years old. Tables were introduced which indicated the expectancy of a person 30 years of age but not of a person 27 years of age. Held, defendant suffered no prejudice. That said tables, to be admissible, need not show the precise age, but *approximately*